

limitations receive no patentable weight, and the prior claims as filed stand in the prosecution." On pages 4-15 of the Office Action mailed 05/02/2006 the claim rejections based on prior art (35 USC §§ 102 and 103) were repeated from before.

Pursuant to MPEP 706.03[o], applicant agrees, assuming the Examiner takes the position that "new matter" has been added by amendment, that procedurally rejections under 35 USC §§ 132(a) and 112, ¶1 are appropriate. (Applicant does not, however, agree with the Examiner's underlying position regarding "new matter.") However, applicant takes issue with the Examiner's position that the amended claim limitations receive "no patentable weight" as though, for example, the claim language is in a claim preamble. In other words, applicant takes issue with the Examiner's extrapolating an issue under 35 USC §§ 132(a) and 112, ¶1 to issues under 35 USC §§ 102 and 103. Otherwise, and assuming the Examiner maintains his position regarding "new matter," the case could never be in condition for appeal; the issues would be indeterminate.

In MPEP 706.03[o], Examiner Note 3 (page 700-76) reads as follows:

3. If new matter is added to the claims, or affects the claims, a rejection under 35 U.S.C. 112, first paragraph, using form paragraph 7.31.01 should also be made. If new matter is added only to a claim, an objection using this paragraph should not be made, but the claim should be rejected using form paragraph 7.31.01. As to any other appropriate prior art or 35 U.S.C. 112 rejection, the new matter must be considered as part of the claimed subject matter and cannot be ignored. [underlining added]

Thus applicant is entitled to an examination of the amended claims in the context of 35 USC §§ 102 and 103 as they stand, regardless of whether the Examiner also takes the position that the amended claims are not supported by the specification as filed.

Objections to the Specification
Claim Rejections - 35 USC §112

Very briefly, specification paragraphs [0012] through [0015] have been objected to on the basis of asserted new matter added by amendment, and independent claims 1, 9, 19 and 27 correspondingly have been rejected under 35 USC §112, first paragraph, as failing to comply with the written description requirement.

In the Advisory Action mailed 07/25/2006, the Examiner makes the following statement:

The request for reconsideration has been considered but does NOT place the application in condition for allowance because: The amendment provided in claims 1, 9, 19, 27 that states "on bale classing samples cut from individual bales" receives support from the specification based on new matter introduced. The Examiner understands the limitation as if for example there are fifty bales produced, then a bale classing sample will be cut from each of the fifty bales, which results in fifty classing samples. However, no where in the applicant's specification as it is originally filed does it provide support for producing a classing sample from each single bale produced. Paragraph [0024] as pointed to by the applicant suggest that one classing sample is cut from a set of bales and fiber quality data is measured on that one classing sample for the entire set of bales. The support for samples cut from individual bales can only be found in the amendment to the specifications filed by the applicant, which results in new matter being introduced. [underlining added]

The Examiner is again urged to reconsider his position in that regard. As a preliminary comment, it is axiomatic that the specification disclosure is directed to persons of ordinary skill in the art. Such persons are well aware that marketing of cotton, at least in the United States, is regulated by Agricultural Marketing Service of the U.S. Department of Agriculture (USDA/AMS). An internet web page printout from www.ams.usda.gov/Cotton/ctnnclass.htm accompanies this paper. Quoting from that web page in part:

Smith-Doxey Classification -

Classification data showing color grade, leaf grade, length, length uniformity, strength, micronaire, trash, and color for each bale is furnished to the producer. Producers use this information in selling their cotton or placing it in the Commodity Credit Corporation (CCC) loan program. Purchases of cotton from farmers are made on the basis of this classification, which is referred to in the cotton trade as the Smith-Doxey Class. [underlining added]

Moreover, compliance with such classification by the USDA/AMS is mandated by statute. 7 USC § 52 reads as follows:

**Use of nonofficial standards prohibited,
sales by sample excepted --**

It shall be unlawful (a) in or in connection with any transaction or shipment in commerce made after August 1, 1923, or (b) in any publication of a price or quotation determined in or in connection with any transaction or shipment in commerce after August 1, 1923, or (c) in any classification for the purposes of or in connection with a transaction or shipment in commerce after August 1, 1923, for any person to indicate for any cotton a grade or other class which is of or within the official cotton standards of the United States then in effect under this chapter by a name, description, or designation, or any system of names, description, or designation not used in said standards: Provided, That nothing herein shall prevent a transaction otherwise lawful by actual sample or on the basis of a private type which is used in good faith and not in evasion of or substitution for said standards.

A relevant implementing Regulation, quoting from 7 CFR § 28.25 of the USDA/AMS Regulations Under the United States Cotton Standards Act reads as follows:

Samples for Form A determination shall be drawn, handled, identified, and shipped by a licensed warehouse according to the methods and procedures specified in this section. Any samples or set of samples which do not meet

these specified requirements may be rejected by the Area Director.

- (a) Samples shall be freshly drawn.
- (b) Each sample shall consist of two portions, one drawn from each side of the bale. Each portion shall be at least six (6) inches wide and approximately twelve (12) inches long and shall weigh at least three (3) ounces.
- (c) Where it is necessary to draw two sets of samples, a single cut should be made in each side of the bale, and the portion of cotton removed from each cut should be broken in half across the layers to provide two complete samples. In those cases where this method would result in samples of insufficient length, it will be acceptable to split the sample lengthwise along the layers provided the outside portion from each side is submitted for the official classification.
- (d) Dressing, trimming, or discarding part of the sample is prohibited. No part of the cotton or pieces of bagging, leaf, grass, dirt, sand, or any other material shall be removed from either side of the sample.
- (e) A coupon showing the correct warehouse bale number and name and address of warehouse shall be placed between the two portions of each sample.
- (f) Samples shall be identified and sacked immediately after they are cut without further handling prior to shipment to the Classing Office.
- (g) Samples shall be addressed to and mailed, shipped, or delivered direct to the Classing Office serving the territory in which the warehouse is located. Samples shall in no case be consigned or routed through the owner or custodian of the cotton. Samples mailed or shipped shall be prepaid.
- (h) The Area Director may require that any licensed warehouse shall provide the crop year, gin name and gin bale number for each sample submitted whenever the Area Director deems that such information is necessary in

order to assure that each sample is properly identified with the correct bale of cotton.

(i) The licensed warehouse shall cooperate with employees of the Division making inspections of sampling procedures, and shall draw or permit the drawing of such additional samples, without charge as may be deemed necessary to appraise sampling procedures.

The disclosure of the claimed invention is in the foregoing context, as is clear from "Background of the Invention" paragraphs [0002] through [0009] in the specification as filed. Particularly relevant prior art practice, which embodiments of the invention specifically improve on, is referred to in specification paragraph [0006] which, as filed, reads:

Thus, at the gin's bale press or, in some cases, at an on-site or off-site warehouse, samples are cut from two sides of each bale and are sent to a classing office (actually, a laboratory) to measure the fiber quality for purposes mentioned just above. In the United States, the quality of a producer's cotton is determined by the U.S. Department of Agriculture-Agricultural Marketing Service (USDA-AMS). The USDA classing offices employ High Volume Instruments (HVIs) to measure the fiber qualities known as Micronaire, Length, Strength and Color. Human classer "measurements" are typically employed for the fiber quality known as Trash. In the United States, there are approximately eleven USDA classing offices, to which about 17,000,000 bale samples are sent for classing each year.

Consistent with that context, specification paragraph [0029] as filed, reads in part:

Also shown in FIG. 1, generally as a second element, is a database storage device 70, which stores a database 72 of bale identifications, for example permanent bale identifications (PBIs), and associated fiber quality and ginning process parameter data, both time-stamped.

Against that background, the Examiner's assertion that specification paragraph [0024] suggests "that one classing sample is cut from a set of bales and fiber quality data is measured on that one classing sample for the entire set of bales" is unfathomable. Quite simply, by statute, regulation and understanding of those persons in the relevant art, commerce in cotton relies on classification of individual bales, and by clear implication on bale classing samples cut from individual bales. To use a sample from one bale to characterize a set of bales would never be done, and likely would be illegal.

Moreover, claim 1 and the disclosure as originally filed call for "a fiber quality measurement instrument located in a cotton gin for providing fiber quality data substantially concurrently with the making up of cotton into individual bales" [underlining added].

In particular, paragraph [0024] in the specification as filed reads as follows:

Within each gin facility 22 and 24 is a fiber quality measurement instrument 50. The fiber quality measurement instrument 50 provides fiber quality data substantially concurrently with the making up of cotton into individual bales. The term "substantially concurrently" is intended herein to mean within minutes of the making up of a bale of cotton at the bale press. Thus, for example, conventional samples may be cut from the sides of the bale right at the bale press, prior to wrapping the bale, and immediately delivered to the measurement instrument 50 for classing. Alternatively, embodiments of the invention may even measure fiber quality data during the ginning process, or at some other point prior to actually making up the bale. Such measurements may be made with either manual or automatic versions of a particular fiber quality measurement instrument 50 identified below. In some cases, samples may be taken from the bale and fiber quality data measured immediately upon entering the warehouse 26 or 28. A characteristic of embodiments of the invention is immediacy of the classing data, in the gin, such that those data may be "fed forward" to optimize the marketing process.

Another benefit of immediately available classing data in the gin is that the ginning process may also be optimized by "feed back" controls.

That paragraph, from the specification as filed, does not disclose or even "suggest that one classing sample is cut from a set of bales and fiber quality data is measured on that one classing sample for the entire set of bales." The Examiner's basis for such a reading is not understood.

Finally, the following is quoted from paragraph [0009] of the specification as filed:

Moreover, since the fiber qualities of bales are not known prior to being transported to warehouses, bales having similar fiber qualities, and likely subsequently to be purchased as a lot once the fiber quality has been determined, are frequently scattered randomly about the warehouse or storage area. Later, when a lot of bales having similar fiber qualities is to be assembled for delivery to a buyer, a substantial and time-consuming effort may be devoted to physically locating and selecting the individual bales.

The "lot" is of bales having "similar" fiber qualities. The fiber quality of each bale on an individual basis necessarily is determined first, before the bales to be assembled as a lot are selected. There is no way that "fiber quality data ... measured on ... one classing sample" is used to characterize "the entire set of bales."

Accordingly, the "new matter" objections to the specification and the corresponding "written description" rejection of the claims should be withdrawn.

Claim Rejections - 35 USC §§ 102 and 103

The arguments on pages 14-21 in applicant's previously-filed but unentered "Amendment in Response to Final Rejection" filed July 5, 2006 under the headings "Claim Rejections - 35 USC §102 / Anthony et al / Claims 1-4, 8, 10, 13-14, 18-22, 28, 31-32 and 36;" "Claim Rejections - 35 USC §103 / Anthony et al in view

of Jammes et al / Claims 5-7, 15-17, 23-25 and 33-35;" "Claim Rejections - 35 USC §103 / Anthony et al in view of Lindsey et al / Claims 9 and 27" and "Claim Rejections - 35 USC §103 / Anthony et al in view of Lindsey et al / Claims 11, 12, 29 and 30" are expressly incorporated herein by reference. In view of the Examiner's stated position discussed above that "the amended limitations receive no patentable weight, and the prior claims as filed stand in the prosecution," it is assumed that those arguments have not previously been considered. As discussed hereinabove, applicant is entitled to an examination of the amended claims in the context of 35 USC §§ 102 and 103 as they stand, regardless of whether the Examiner also takes the position that the amended claims are not supported by the specification as filed.

Favorable such examination is requested.

Conclusion

Reconsideration and allowance are requested. The following is a list of claims in the case: 1-3, 5, 6, 8-13, 15, 16, 18-21, 23, 24, 26-31, 33, 34 and 36-40.

Respectfully submitted,



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**Cotton Progra**

AMS USDA SEARCH

Cotton Classing Services

- ◆ Classification
- ◆ Fiber Measurements
- ◆ Classing Services
- ◆ Cotton Facility Locations



The objective of the Grading and Classing program for cotton is to facilitate interstate and foreign commerce in cotton by providing official quality determinations that aid in marketing. AMS accomplishes this goal by inspecting, identifying, and certifying that product quality is in accordance with official standards. The program determines the quality of the current crop and of the annual carryover.

Cotton classification functions are performed by the Grading Branch, consisting of classing offices, and the Standardization and Engineering Branch and the Quality Assurance Branch, which are located in Memphis, TN.

Twelve cotton classing offices make up the Grading Branch. The classing offices are located in nine states throughout the Cotton Belt. The Cotton Program Office of the Deputy Administrator is located in Washington D.C..

All office locations are shown on the map below:



| | |
|---|--|
| <u>Abilene TX Classing Office</u> | <u>Macon GA Classing Office</u> |
| <u>Birmingham AL Classing Office</u> | <u>Memphis TN Classing Office</u> |
| <u>Corpus Christi TX Classing Office</u> | <u>Phoenix AZ Classing Office</u> |
| <u>Dumas AR Classing Office</u> | <u>Rayville LA Classing Office</u> |
| <u>Florence SC Classing Office</u> | <u>Visalia CA Classing Office</u> |
| <u>Lamesa TX Classing Office</u> | <u>Washington Administration Office</u> |
| <u>Lubbock TX Classing Office</u> | |

Direct supervision of all cotton grading and classing services performed by classing offices is provided by the Grading Branch. The Standardization and Engineering Branch and the Quality Assurance Branch provide oversight and guidance to the grading services. Standardization and Engineering is responsible for development, preparation, and distribution of the official standards used to ensure uniformity in grading. Quality Assurance administers a comprehensive review and evaluation of quality assurance activities to analyze internal office operations and assigned classification data. Quality Assurance also has final authority in resolving any questions concerning assigned grades. These three branches work cooperatively to ensure that all grading services are provided correctly and in adherence will all applicable policies and procedures.

Agricultural Marketing Specialists assigned to the classing offices make at least two inspections of all sampling agents during the year to determine if samples are being properly drawn. Samples must be properly drawn and handled to maintain representativeness of the sample. The usefulness of a sample also depends upon the preservation of its identity. Halves of the sample are drawn from each side of the bale,

and a tag or coupon showing bale number, name of gin, compress, warehouse, or other distinct identification must be kept between the two portions if the sample's identity is to be maintained.

Cotton Classification

Classification of samples is based on official standards. Leaf grade, preparation, and extraneous matter determinations are made by cotton classers. All other fiber properties of both Upland and American Pima cotton are determined by High Volume Instrument (HVI) systems. The HVI systems currently consist of instrument measurements for fiber length, length uniformity, strength, micronaire, color, and trash.

Fiber property measurements made by HVI and grades assigned by classers for each sample are stored automatically in the computer as soon as the classification is completed. The classification data is then available by telecommunications to the authorized recipient's computer. The classification data may also be delivered to the grower or his designated agent by means of tapes or diskettes. An explanation of how to interpret classification data can be found in Cotton Classification Results: Understanding the Data

Fiber Measurements

A description of each measurement included in USDA's official cotton grade follows:

Leaf Grade - Highly trained human classers determine the leaf grade by comparison with the practical forms of the Universal standards for the grades.

Fiber Length - Fiber length is measured on a beard of cotton fibers on HVI systems and is reported in hundredths of an inch and equivalent staple length in thirty-seconds of an inch. Length is a good indicator of yarn strength and spinning efficiency.

Length Uniformity - Length uniformity measures the degree of fiber length uniformity in a sample. Fiber length uniformity is related to spinning efficiency, yarn uniformity, and yarn strength.

Strength - The fiber strength measurement is made by clamping and breaking the beard of fibers with 1/8-inch gage spacing between the clamp jaws. The strength reported is the force in grams required to break a bundle of fibers one tex unit in size.. A tex unit is equal to the weight in grams of 1,000 meters of fiber. Fiber strength is closely related to yarn and fabric strength and to spinning efficiency.

Micronaire - The airflow instrument in the HVI system measures fiber fineness. Fineness and maturity are highly correlated within the same cotton variety. Fiber fineness affects yarn appearance, yarn uniformity, and yarn strength.

Trash - The trash measurement is made by a video trashmeter, which measures the percentage area of trash on the sample surface. This measurement provides an estimate of the total amount of trash in the bale.

Color - Color measurements are made by a colorimeter. The instrument measures grayness (Rd), which indicates how light or dark the sample is, and also yellowness (+b), which indicates how much yellow color is in the sample. Color gives an indication of the fibers' ability to accept dyes in the manufacturing process.

Classing Services

- Classification
- Review Classification
- National Database
- Form R Memorandum
- Form A Memorandum
- Form D Memorandum
- Reclassification-CCC Sales
- Futures Classing

The following grading and classing services are provided on a fee basis:

Smith-Doxey Classification - Classification data showing color grade, leaf grade, length, length uniformity, strength, micronaire, trash, and color for each bale is furnished to the producer. Producers use this information in selling their cotton or placing it in the Commodity Credit Corporation (CCC) loan program. Purchases of cotton from farmers are made on the basis of this classification, which is referred to in the cotton trade as the Smith-Doxey Class.

All fee classing services provide for one **review** classification. The applicant may request that the review be done by the local classing office or by the Quality Assurance Branch in Memphis, TN.

A **National Database** is maintained at the Cotton Program offices in Memphis, TN, for telecommunication of classing data to owners/agents other than cotton gins, such as merchants, textile mills, and marketing organizations. The system contains classing data for the current and previous crop years. This system is also capable of issuing printed Form R Memoranda to firms requesting this service. To receive data from this system, callers must have a stand-alone IBM-compatible personal computer, a Hayes-compatible modem, and the Cotton Program's software package. The current cost for telecommunicated data from the National Database is five cents per bale. Long distance telephone charges are paid by the caller. There is a one-time charge of \$17.25 for the user software. **Questions regarding the National Database should be addressed to the Cotton Program's IT Staff in Memphis, TN, at 901/384-3007. The fax number is 901/384-3035.**

Form R Memorandum - The owner of the cotton may request a certified listing of bale by bale classification data. The charge for this service is fifteen cents per record.

Form A Memorandum - This certificate is issued on samples drawn and submitted to a classing office by a licensed warehouseman at the request of the cotton owner. A shipper is sometimes required to obtain this certificate for Government-financed exports under Public Law 480 programs and AID programs to countries that do not have cotton buyers experienced in the classification of U.S. cotton.

Form D Memorandum - This certificate is issued on samples submitted by the owner of the cotton for an informative classification. Upland-type cotton grown in foreign countries is classed under this authority. Since AMS does not license or inspect the samplers of the cotton submitted for classification, this classification cannot be certified.

Miscellaneous Classing - Cotton classing offices also class cotton for USDA research agencies, State Experiment Stations, and others as authorized under the U.S. Cotton Standards Act.

Reclassification of Cotton for CCC Sales Program - Most CCC sales programs in recent years have required reclassification of the cotton, on a fee basis, for final settlement purposes. Although the volume of CCC program classing has been small in recent years, substantial volumes have been classed in previous years, and the variation in volume from year to year is caused by market conditions. The fee for this service is paid by the cotton buyer.

Futures Classing - All cotton eligible for delivery on futures contracts must be classed by AMS. This classing is done on a fee basis at the Quality Assurance Branch in Memphis, TN.

The licensing of cottonseed samplers and the maintenance of official cottonseed standards has been discontinued by the AMS, Cotton Program.

AMS program costs are fully recovered each year from the fees collected plus the proceeds of the sales of rebaled loose cotton. The samples for Smith-Doxey classification become Government property after classification. Samples for classification under other programs also become Government property after classing, unless return of the sample is requested and a fee is paid for the sample return. The samples are rebaled after classing and sold on competitive bids.

About 98 percent of all cotton produced each year is graded on a fee basis for cotton producers. This is indicative of the grower's need for quality information in the marketing of cotton. USDA's official standards for cotton are recognized worldwide and enhance the marketing system for the entire cotton industry, from producer to processor, and ultimately to the consumer.

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